

**Letter of Findings: 65-20200418
Indiana Overweight Proposed Assessment
For the Year 2019**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department did not agree that Indiana Motor Carrier established that the imposition of a \$5,000 oversize/overweight penalty was entirely unwarranted; however, the Department agreed that there were mitigating circumstances justifying the reduction of the \$5,000 penalty.

ISSUE

I. Motor Vehicles - Oversize/Overweight Penalty.

Authority: IC § 6-8.1-5-1; IC § 6-8.1-1-1; IC § 9-20-1-1; IC § 9-20-1-2; IC § 9-20-6-11; IC § 9-20-18-14.5; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the assessment of an oversize/overweight civil penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana individual which owns and operates a motor carrier service. According to publicly available information, Taxpayer's three vehicles transport lumber, logs, and mulch. In doing so, Taxpayer's vehicles routinely transport the products within Indiana and outside Indiana.

In October of 2019, Taxpayer had occasion to operate one of his vehicles on a state road and an interstate highway. In doing so, it was carrying a load of bark mulch and was stopped by the Indiana State Police while traveling on interstate highway 69. The vehicle and its load were found to weigh 87,800 pounds which was 7,800 pounds over the permitted weight. Taxpayer did not possess a permit to transport an oversized or overweight load.

The Indiana Department of Revenue ("Department") issued a \$5,000 "civil penalty" which the Department, in its notice and proposed assessment sent Taxpayer, described as "the maximum civil amount that may be imposed by Indiana law"

Taxpayer disagreed with the proposed penalty assessment and submitted a protest to that effect. In his protest submission, Taxpayer explained that he believed the "proposed penalty is excessive under the circumstances" and he had "already paid fines and costs in excess of \$435 to Daviess County for this violation."

Taxpayer further pointed out that he was not a "repeat offender," the nature of the offense did not "warrant this amount of penalty," and he "could have secured a permit to [haul] up 100,000 pounds for \$65-\$150."

Finally, Taxpayer stated his load of mulch was "level and tarped," that the additional 7,800 pounds being transported was "not a safety issue," and, had he been operating on a state highway and not an interstate highway, he "would have been within or, very close to the legal limit"

An administrative hearing was conducted by telephone during which Taxpayer and his designated representative explained and reiterated the basis for his protest. This Letter of Findings results.

I. Motor Vehicles - Oversize/Overweight Penalty.

DISCUSSION

Taxpayer argues that, as noted above, the \$5,000 penalty was both excessive and unwarranted.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

The Department notes that, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

According to IC § 9-20-1-1, "[e]xcept as otherwise provided in [IC Art. 9-20], a person, including a transport operator, may not operate or move upon a highway a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-1-2, the owner of a vehicle "may not cause or knowingly permit to be operated or moved upon a highway [in Indiana] a vehicle or combination of vehicles of a size or weight exceeding the limitations provided in [IC Art. 9-20]."

According to IC § 9-20-6-11(b), "[a] person may not violate the terms or conditions of a special permit."

IC § 9-20-18-14.5 authorizes the Department to impose civil penalties against Motor Carriers that obtain a permit under IC Art. 9-20 and violate IC Art. 9-20 ("Permit Violation Civil Penalty") or are required, but fail, to obtain a permit under IC Art. 9-20 ("No Permit Civil Penalty"). IC § 9-20-18-14.5(c) provides that a person "who transports vehicles or loads subject to this article and fails to obtain a permit required under this article is subject to a civil penalty" According to IC § 9-20-18-14.5(b), the Department may also subject a person to a civil penalty if the person "obtains a permit under" IC Art. 9-20 and violates IC Art. 9-20 by being overweight or oversize.

IC § 6-8.1-1-1 states that fees and penalties stemming from IC Art. 9-20 violations are a "listed tax." These listed taxes are in addition to and separate from any arrangement or agreement made with a local court or political subdivision regarding the traffic stop. In other words, the \$5,000 penalty at issue is over and above the \$435 penalty paid Daviess County.

Although this is not the first penalty issued to the Taxpayer, the Department is not unsympathetic to Taxpayer's business concerns and the circumstances surrounding the incident. The Department notes that vendor that loaded the mulch did not have facilities to weigh Taxpayer's vehicle at the outset of the trip. It was the vendor who loaded this bulk load of mulch unto Taxpayer's trailer and that this type of load is particularly susceptible to weight variances; a full load of dry mulch weighs substantially less than an equally full load of wet mulch while a load of mulch which has sat unprotected in the vendors' yard during a rainstorm weighs even more.

The Department notes that, first, Taxpayer is required to have a permit for carrying loads that exceed statutory limits at the time of transport. This allows the Department to provide Taxpayer a route safe for transport. In this case, however, Taxpayer believed that their vehicle was below the statutory weight limit. Taxpayer did not have a permit on their vehicle at the time of the traffic stop, and therefore was correctly assessed a No Permit Civil Penalty. Moreover, Taxpayer would not have required a permit for travel if its vehicle were not on an interstate highway, because the load was less than 10[percent] over the statutory weight limit. IC § 9-20-4-2.

In addition to providing Taxpayer an opportunity to protest, IC § 9-20-18-14.5 provides "not more than" language to the Department when generating a proposed assessment amount. In this case, the Department will generate a proposed assessment with a reduced amount, as authorized under the Department's statutory discretion and this Letter of Findings.

FINDING

Taxpayer's protest is respectfully denied.

July 21, 2021

Posted: 09/29/2021 by Legislative Services Agency
An [html](#) version of this document.